

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

DANIEL HERNANDEZ,

Defendant.

18-CR-834-04 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

On February 15, 2019, the Court issued an order (Dkt. No. 120) authorizing defendants Kifano Jordan and Faheem Walter to move, by February 27, 2019, for the disqualification of Lance Lazzaro, Esq., as counsel for defendant Daniel Hernandez. Neither defendant elected to file such a motion. Under the Court's order, each has therefore foregone the right to move for Mr. Lazzaro's disqualification, based on information presently known to them. Mr. Lazzaro therefore requests that he be permitted to resume the representation of Mr. Hernandez, upon the successful completion of a *Curcio* hearing in which Mr. Hernandez would be asked questions about Mr. Lazzaro's representation and whether he would be willing to waive any potential conflict of interest presented by Mr. Lazzaro's earlier presentation.

The Court will permit Mr. Lazzaro's to resume the representation of Mr. Hernandez on two conditions:


First, although neither Mr. Jordan nor Mr. Walter has moved for disqualification, the Court has an independent obligation to satisfy itself that Mr. Lazzaro does not possess any privileged information regarding Messrs. Jordan or Walter that could be used to their detriment and that the subjects of Mr. Lazzaro's prior representations of these persons did not factually

overlap with the subject of the present case. To this end, the Court directs Mr. Lazzaro to submit a detailed sworn affidavit addressing these points in more detail than previously, including chronicling in detail the nature and history of the prior representations, explaining the relationship (if any) between these representations at and the present charges against Messrs. Jordan, Walter, and Hernandez, and to enumerate all privileged information obtained during the course of these representations. For avoidance of doubt, the Court expects that Mr. Lazzaro will redact from the publicly filed version of this affidavit any privileged communications or information whose public disclosure would disclose information protected as attorney work-product; Mr. Lazzaro is to file the unredacted original of the affidavit under seal and to provide the Court's chambers, by hand, with two unredacted copies of the affidavit. As exhibits to the affidavit, Mr. Lazzaro is to attach all records he has maintained of any attorney-client communications with either Mr. Jordan or Mr. Walter, in whatever form maintained (including file memoranda, correspondence, handwritten notes, emails, texts, etc.). These attachments, of course, are to be redacted from any public filing. **This submission is due Wednesday, March 20, 2019.** The Court expects that its review of these materials will enable it independently to determine whether Mr. Lazzaro's resumed representation of Mr. Hernandez presents any risk to his former clients. The Court will make this assessment with dispatch.

Second, assuming that the Court's review of Mr. Lazzaro's submission does not reveal any impediment to his resumed representation of Mr. Hernandez, the Court will promptly convene a *Curcio* hearing involving Mr. Hernandez, as proposed. The Court schedules this hearing for **Thursday, March 28, 2019, at 3 p.m.** The Court directs that the Government submit a proposed *Curcio* allocution for Mr. Hernandez by **Friday, March 22, 2019**; the Court invites but does not require Mr. Lazzaro, and Mr. Hernandez's non-conflicted counsel, Dawn

Florio, Esq., to submit their own proposed *Curcio* allocutions, due the same date. The Court expects that, in advance of the this hearing, Ms. Florio will have met with Mr. Hernandez and reviewed in detail with him the areas of potential conflict presented by Mr. Lazzaro's representation, so as to make it more likely that Mr. Hernandez, at the March 28 conference, will be able to make an informed waiver of the potential conflict.

SO ORDERED.

  
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PAUL A. ENGELMAYER  
United States District Judge

Dated: March 13, 2019  
New York, New York